

**FILED**

**MAR 01 2019**

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA and the  
STATE OF CALIFORNIA ex rel.  
ERIN HAYES and RICHARD PONDER,

Plaintiffs,

v.

COVIDIEN, INC., a corporation,  
Defendant.

CASE NO. C 14-1511 EDL

**NOTICE OF INTERVENTION FOR  
PURPOSES OF SETTLEMENT;  
[PROPOSED ORDER] TO UNSEAL**

**FILED UNDER SEAL**

1 The United States, the State of California, Relators, and Defendant have entered into an  
 2 agreement to resolve certain claims in this action (“Agreement”). In light of this Agreement, and  
 3 for the purpose of effectuating and formalizing that resolution, pursuant to the False Claims Act,  
 4 31 U.S.C. §§ 3730(b)(2) and (4), the United States respectfully advises the Court of its decision  
 5 to intervene for the purposes of settlement. The State of California also intervenes in this action  
 6 for the purposes of settlement, pursuant to the California False Claims Act, Cal. Gov’t Code  
 7 § 12650 *et seq.*

8 1. Specifically, the United States and the State of California intervene in this action  
 9 with respect to civil claims predicated upon the following factual allegations (the “Covered  
 10 Conduct”):

11 The United States and the States contend that they have certain civil claims against  
 12 Covidien arising from Covidien’s provision of practice development support and/or  
 13 market development support to health care providers located in California and  
 14 Florida during the period January 1, 2011, through September 30, 2014, to induce  
 15 those health care providers’ purchase of ClosureFAST™ radiofrequency ablation  
 16 catheters, in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, thereby  
 17 causing the submission of false claims to Medicare and to the California and Florida  
 18 Medicaid programs.

19 2. Under the terms of the Agreement, the United States, the State of California, and  
 20 Relators are obligated to promptly sign and file a Stipulation of Dismissal of this action  
 21 following the receipt of the Settlement Amount, which must be received no later than 10 days  
 22 after the Effective Date of the Agreement.

23 3. It is the United States’ position that applications filed by the United States for  
 24 extensions of the investigative period, any applications for partial lifting of the seal, and any  
 25 orders previously entered in this matter should properly remain under seal, because such papers  
 26 discuss the content and extent of the United States’ investigation and are provided by law to the  
 27 Court alone for the sole purpose of evaluating whether the seal and time for making an election  
 28 to intervene should be extended and/or partially lifted. However, the United States recognizes  
 that the Court disagrees with this position, as set forth in *United States v. Broker Solutions, Inc.*,  
 Civ. No. 17-04384-EDL, ECF No. 17 (Aug. 6, 2018). Accordingly, the United States and the  
 State of California request that the Court unseal this action. Relators consent to this request.

1 A proposed order accompanies this Notice.

2 DATED: February 1, 2019

3 *March*

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14 Attorneys for the United States of America

15 DATED: February 27, 2019

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22 Attorneys for the State of California

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of:

**Notice of Intervention for Purposes of Settlement; [Proposed] Order to Unseal**

**Case No.: C 14-1511-EDL**

**FILED UNDER SEAL**

to be served this date upon the party(ies) as follows:

Christian Schreiber  
Olivier Schreiber & Chao, LLP  
201 Filbert Street, Suite 201  
San Francisco, CA 94133

☒ BY FIRST CLASS MAIL, by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this offices practice.

☐ BY PERSONAL SERVICE, (MESSENGER)

☐ FEDERAL EXPRESS

☐ FACSIMILE, (FAX) Telephone No.:

☐ BY E-MAIL: I caused each such document to be sent by email to the person or offices of each address above.

☐ CERTIFIED MAIL, by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this offices practice.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: 3/1/19

  
TINA LOUIE  
Legal Assistant